

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR08-939

RICKY MONTGOMERY
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered March 4, 2009

APPEAL FROM THE UNION
COUNTY CIRCUIT COURT
[NO. CR-2007-0345-1]

HONORABLE HAMILTON H.
SINGLETON, JUDGE

AFFIRMED

JOSEPHINE LINKER HART, Judge

A Union County jury convicted Ricky Montgomery of misdemeanor attempted theft of property and the trial court imposed a \$500 fine. On appeal, he argues that there was insufficient evidence of his intent. We affirm.

Montgomery was tried for attempting to steal electrical cable from Entergy. The pertinent evidence adduced at trial is as follows. Entergy employee Russ Walker testified that on April 20, 2007, he observed a truck hooked by a chain to an underground wire owned by his company. He notified the police.

State Trooper William James testified that while he was on his way to work, he observed a brown truck parked on a bridge. A black man, whom he identified in court as Montgomery, was in the driver's seat, and another black man was next to the right bumper

of the vehicle. As Trooper James got closer, the man outside got into the truck, and it drove away. When Trooper James came to the location where the truck was parked, he noticed that there was a chain wrapped around a cable on the bridge. He initiated an investigatory stop of the brown truck and stayed on the scene until Union County Sheriff's Department Criminal Investigator Bruce Patterson arrived. Officer Patterson testified that in his search of Montgomery's truck, he discovered a three-foot long piece of copper wire, wire cutters, needle nose pliers, two hack saws, and two electrical testers. Entergy Operations Coordinator Walter McDonald testified that Montgomery was not authorized to remove the cable.

Montgomery testified in his own defense. He admitted to trying to "get the wire" but denied knowing that it belonged to Entergy. He claimed that he was told that there was "scrap wire" in the ditch, and he was trying to retrieve it. According to Montgomery, he fled upon Trooper James's approach because he had been drinking and "didn't need to be talking to the police with alcohol on my breath." However, he admitted that he did not own the wire and that he did not contact Entergy to get permission to remove it. He also admitted that he owned the cutting tools found in the truck, as well as the electrical tester, but denied cutting any wire.

Montgomery argues on appeal that the State failed to prove that he formed the "necessary criminal intent" of knowingly attempting to take the wire cable or to deprive Entergy of it. He concedes that "it cannot be denied [that his] actions make him appear

guilty.” However, he contends that his testimony “ established a reasonable explanation for his conduct.” We find this argument unpersuasive.

The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Martin v. State*, 354 Ark. 289, 119 S.W.3d 504 (2003). Evidence is substantial if it is of sufficient force and character to compel reasonable minds to reach a conclusion and pass beyond suspicion and conjecture. *Id.* On appeal, we view the evidence in the light most favorable to the State, considering only that evidence that supports the verdict. *Id.*

We hold that there is substantial evidence of Montgomery’ s culpable mental state. A person commits theft of property if he “ knowingly” takes or exercises unauthorized control over, or makes an unauthorized transfer of an interest in, the property of another person, with the purpose of depriving the owner of the property.” Ark. Code Ann. § 5-36-103 (a)(1) (Repl. 2006). “ Knowingly” is defined in our criminal code as:

A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

Ark. Code Ann. § 5-2-202(2) (Repl. 2005). In the instant case, Montgomery admitted that he was attempting to take the wire and that he was not authorized by Entergy to take it. Furthermore, Trooper James testified that Montgomery and his associate fled upon seeing him approach. It is settled law that evidence of flight to avoid arrest may be considered by

the jury as corroborative of guilt. *Grillot v. State*, 353 Ark. 294, 107 S.W.3d 136 (2003).

While we are mindful that Montgomery offered an explanation for his actions, under our standard of review, this evidence does not compel a different result. This evidence would not tend to support the verdict and therefore, we do not consider it. *Martin v. State*, *supra*. Furthermore, it is axiomatic that it is the exclusive province of the finder-of-fact to determine the credibility of witnesses, and a jury is not required to believe a defendant's self-serving testimony. *Killcrease v. State*, 310 Ark. 392, 836 S.W.2d 380 (1992).

Affirmed.

GLOVER and HENRY, JJ., agree.